TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 204.

THE PLAQUEMINES TROPICAL FRUIT COMPANY, APPELLANT,

vs.

WILLIAM HENDERSON AND HENRY J. LEONY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JULY 26, 1899.

(16,342.)

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(16,343.)

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

PLAQUEMINES TROPICAL FRUIT COMPANY, Appellant, *versus* WILLIAM HENDERSON and HENRY J. LEOVY, Appellees. } No. 12375. In Equity.

Messrs. Gurley & Mellen and Duane E. Fox, for the Plaquemines Tropical Fruit Company, appellant.

Messrs. J. P. Blair and Victor Leovy, for William Henderson and Henry J. Leovy, appellees.

Appeal from the circuit court of the United States for the eastern district of Louisiana, New Orleans division, to the Supreme Court of the United States of America, returnable within thirty (30) days from the 26th day of June, A. D. 1896, at the city of Washington, D. C.

Transcript of Appeal.

1 United States Circuit Court, Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT COMPANY *versus* WILLIAM HENDERSON and HENRY J. LEOVY. } No. 12375. In Equity.

Bill of Complaint.

Filed February 11, 1895.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The Plaquemines Tropical Fruit Company, a corporation organized and existing under the laws of the State of New Jersey and a citizen of said State, exhibits this its bill of complaint against William Henderson and Henry J. Leovy, who each reside in the city of New Orleans and are citizens of the State of Louisiana.

And thereupon your orator complains and says:

1. That your orator is the owner and in possession of that certain parcel of land in the parish of Plaquemines, State of Louisiana, consisting of all the land situated in township twenty-one (21) south, ranges thirty and thirty-one (30 & 31) east, lying west of the Mississippi river and Grand pass, except certain lots of small depth fronting on said Mississippi river, all lying above lot seven (7), in range thirty-one (31); also excepting section sixteen (16),

2 in range thirty (30); that your orator acquired said land by purchase from Chas. Louque by act of sale passed in the city

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of New Orleans, State of Louisiana, upon the 27th day of November, A. D. 1891, before Chas. T. Soniat, notary public; that said Chas. Louque acquired said land by purchase from Robert M. White by act of sale passed in the city of New Orleans, State of Louisiana, upon the 27th day of November, A. D. 1891, before Chas. T. Soniat, notary public; that said Robert M. White acquired said land by purchase from E. E. Norton, assignee in bankruptcy of the estate of C. C. Packard, by act of sale passed in the city of New Orleans, State of Louisiana, upon the 4th day of April, 1879, before Marcel T. Ducros, notary public, said sale having been made in pursuance of an order emanating from the United States circuit court in and for the district of Louisiana, bearing date the 12th day of March, A. D. 1879; that said C. C. Packard acquired said land by purchase from the State of Louisiana by patent 526 of said State of Louisiana, bearing date of 30th day of September, 1869; that said State of Louisiana acquired said land from the Government of the United States under the provisions of the act of Congress of the date of March 2nd, 1849, and the selection of said land was approved by the Secretary of the Interior May 6th, 1852; all of which will more fully appear, with other particulars, from the certified copies of said acts of sale and patent and approved list, hereto annexed and marked Exhibits A, B, C, D, and E for identification and made part of this bill.

2. Your orator further avers that the said William Henderson and Henry J. Leovy wrongfully deny your orator's title to portions of said land and wrongfully allege title in themselves adverse to your orator to portions of said land, and both said Henderson and
3 said Leovy have, by and through their agents, representatives, servants, and employees, trespassed upon your orator's said land and damaged and injured said land and your orator by cutting timber and willows thereon and removing and selling the same, and by plowing, cutting ditches, and otherwise destroying portions of said land; and the said Henderson and said Leovy are still so trespassing upon your orator's said land and cutting willows therefrom and otherwise injuring said land and damaging your orator, and they and each of them threaten to further trespass upon said land and to commit acts which will injure said land and your orator; and they further threaten to injure your orator's rights by dividing said land into small parcels or lots and renting or selling the same to a great number of persons, whom said Henderson and Leovy threaten to place upon said land; and your orator further avers that said defendants have threatened and do threaten to close Red pass and Tiger pass of the Mississippi river, which passes run through said land and afford the only means of access to large portions of your orator's said land, which actions will result in irremediable injury to the land and to your orator and cannot be compensated in damages; and the said actions and pretences of defendants have prevented and do prevent your orator from the enjoyment of its property, and prevents your orator from improving and selling said land, which is one of the principal objects for which your orator came into existence.

3. And your orator avers that neither the said Henderson nor the said Leovy have any legal right, title, or claim to any portion of said land, and their said acts and threatened acts are wholly unauthorized and illegal; that the said Henderson and the said Leovy claim to have purchased from the State of Louisiana,
4 through the register of the land office of said State, long subsequent to the said sale by the State of said land to your orator's said vendor, the following portions of said land on the dates stated and under patents numbered as follows, viz:

In Township Twenty-one (21) *South, Range Thirty* (30) *East.*

Pat. No.	Date.	Patentee.	Description.	Area stated in patent.
1944	May 11, 1894	H. J. Leovy	East ½ sec. 26	320 acres.
1945	" " "	" "	West ½ sec. 35	320 "
1946	" " "	" "	North ½ sec. 25	320 "
1947	" " "	" "	E. ¼ & S. W. ¼ sec. 24	480 "
1948	" " "	" "	N. E. ¼ sec. 29 & S. E. ¼ sec. 20	320 "
1949	" " "	" "	N. ½ & S. W. ¼ sec. 21	480 "
1950	" " "	" "	S. ½ sec. 15	320 "
1951	" " "	" "	S. ½ sec. 14	320 "
1952	" " "	" "	N. E. ¼ & S. ½ sec. 13	480 "

In Township Twenty-one (21) *South, Range Thirty-one* (31) *East.*

2641	Apr. 8, 1893	Wm. Henderson	Sec. 18	640 "
2642	" " "	" "	Sec. 19	640 "
2643	" " "	" "	Sec. 20	640 "
2644	" " "	H. J. Leovy	Sec. 32	640 "
2651	May 3, 1893	Wm. Henderson	Sec. 29	640 "
2652	" " "	" "	Sec. 33	640 "
1906	May 11, 1894	" "	Fractional secs. 7 & 17	580 "
1907	" " "	" "	Sec. 28	640 "
1908	" " "	" "	Fractional sec. 21	320 "
1953	" " "	H. J. Leovy	W. ½ sec. 30	320 "
2017	May 22, 1894	" "	E. ½ sec. 30	320 "
2018	" " "	" "	E. ½ sec. 31	320 "

And your orator avers that said defendants assert and claim
5 that your orator has no title to said portions of said land because of a decision of the civil district court for the parish of Orleans and of the supreme court of the State of Louisiana, rendered in the case entitled "State of Louisiana *vs.* Chas. C. Buck and The Plaquemines Tropical Fruit Company," being # 11166 of the docket of said supreme court; and the said Henderson and the said Leovy claim that your orator's title hereinbefore set forth only extends to and includes thirteen hundred and twenty acres of the land herein first described and claimed by your orator, and that the said subsequent sales of said portions of said land by the said State to them, said Henderson and said Leovy, are therefore valid. Your orator, on the contrary, avers and charges that its said title

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embraces the whole of said land from the Mississippi river and the Grand pass back to West bay, excepting the lots fronting on the river and section sixteen, in range thirty, and that the said subsequent sales by said State to said Henderson and said Leovy of said portions of said land are illegal, null, and void, and that the said decision of said State courts in said case of "State of Louisiana *vs.* Chas. C. Buck and The Plaquemines Tropical Fruit Company" is illegal, null, and void, and of no force or effect, because said State courts were without jurisdiction to entertain or determine said case, and that said decision is erroneous.

4. Now, your orator avers that the said patent # 526, so issued by the State of Louisiana to C. C. Packard, Sept. 30th, 1869, and under which title your orator so holds said property, as aforesaid, transfers and conveys all the lands in township twenty-one (21) south, ranges thirty and thirty-one (30 & 31) east, southeastern land district of Louisiana, between the Mississippi river and West bay,
6 excepting lots fronting on the said river, and sections sixteen, in both ranges; and your orator avers that said patent of the State of Louisiana was a sale of the said land in its entirety, just as it was acquired by the State from the United States, and without any reservation of batture or riparian accretions, and the said State of Louisiana has so interpreted said patent # 526 ever since its issuance in 1869 by assessing the whole of said land under said patent and collecting taxes thereon and by cancelling subsequent entries made upon said land, which will more fully appear from the certified copy of the proceedings had before the register of the land office of said State concerning the cancellation of the patents of the State of Louisiana # 2050 and # 2072, issued to G.W.R. Bayley, agent, on April 27th and June 12th, 1875, and the finding and action of said register, dated August 22nd, 1888, hereto annexed and made part of this bill and marked Exhibit F.

5. Further, your orator avers that the said decision of the civil district court for the parish of Orleans and of the supreme court of the State of Louisiana in the said case of the "State of Louisiana *vs.* Chas. C. Buck and The Plaquemines Tropical Fruit Company" is erroneous and incorrectly interprets your orator's rights under the said title, and that said decision is null and void and of no force or effect for the reason that the plaintiff therein was the State of Louisiana, the defendant Chas. Collins Buck was then and is now a citizen of the State of Maryland, and the other defendant therein, The Plaquemines Tropical Fruit Company, your orator, was at the time of said suit and is now a corporation organized and existing under the laws of the State of New Jersey and a citizen of the State of New Jersey, and the said civil district court for the parish of Orleans,
7 State of Louisiana, and the said supreme court of the State of Louisiana had no authority or jurisdiction to hear and determine the controversy presented in the case, because the first paragraph of section two (2) of article III of the Constitution of the United States provides that "the judicial power (of the United States) shall extend * * * to controversies * * * between a State and citizens of another State," and because the second paragraph of

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section 2 of article III of the Constitution of the United States provides that "in all cases effecting ambassadors or other public ministers or consuls and those in which a State shall be a party, the Supreme Court (of the United States) shall have original jurisdiction;" and because the said courts of the State of Louisiana do not and cannot exercise any portion of the judicial power vested in the United States by section 1 of article III of the Constitution of the United States; and your orator now specially invokes and pleads against the operation and effect of said decision of said State courts the said Federal constitutional provision and guarantee and immunity against suit by the State of Louisiana in her own courts.

6. Further, your orator avers that unless the said Henderson and the said Leovy are restrained by an injunction they will continue to assert title in themselves to portions of said land, and to trespass thereon, and remove the timber and willows therefrom, and will carry out their intention of closing said Red and Tiger passes, and so will cause irreparable damage to your orator, and will execute their threat to divide said land into small parcels or lots and place a great number of persons on said land, and so will necessitate a multiplicity of suits by your orator in order to maintain its title and possession.

7. Your orator avers that the portions of said land to which
8 each of said defendants assert title adversely to your orator exceed in value the sum of five thousand ($5,000) dollars.

Wherefore your orator avers that it is without adequate remedy at law in the premises, and is therefore compelled to come into a court of equity, where such matters are more properly cognizable and relievable. To the end, therefore, that your orator may have such relief as can only be granted by a court of equity, your orator prays:

1. That an injunction issue herein *pendente lite* against each of said defendants, their agents, representatives, servants, and employees, and that on the final hearing the same be made perpetual, forever restraining and prohibiting the said William Henderson and the said Henry J. Leovy and their agents, representatives, servants, and employees, from asserting any title or claim whatsoever in or to any portion of said land adverse to plaintiff, and from trespassing upon any portion of said land, and from cutting timber and willows thereon and removing and selling the same, and from plowing, cutting ditches, or otherwise destroying any portion of said land, and from dividing said land into parcels or lots, and from selling or renting or attempting to sell or rent to any person or persons the whole or any part of said land, and from placing any persons on said land, and from closing up either Red, Tiger, or any other pass upon or through said land, and from in any way interfering with plaintiff's possession and enjoyment of said land, and from in any manner injuring the same.

2. That the said defendants and each of them answer all and singular the allegations in the premises, not under oath (their oath being expressly waived), and show, if they can, why your orator should not have the relief prayed for, and that on final hearing

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there be judgment against said defendants and each of them
9 and in favor of your orator, decreeing its said title to embrace and include the whole of said land first herein described and recognizing the validity of said title and quieting your orator in its possession of said land.

And may it please your honors to grant unto your orator writs of subpœna, under the seal of this court, addressed to each of said defendants, commanding them and each of them, at a time fixed, to appear and answer herein (but not under oath), and to abide by and perform all the orders and decrees of this honorable court in the premises, and that your orator may have such other and further and general relief as the nature of the circumstances of the case and equity and good conscience require.

And your orator will ever so pray.

(Signed) GURLEY & MELLEN,
DUANE E. FOX,
Solicitors for Comp't.

(Signed) PLAQUEMINES TROPICAL FRUIT CO.,
Per CHAS. COLLINS BUCK,
Vice-President.

Let the defendants show cause on Wednesday, February 13th, 1895, at 11 o'clock a. m., why a preliminary injunction should not issue in the above cause.

New Orleans, Feb. 11, 1895.

(Signed) CHARLES PARLANGE, *U. S. Judge.*

UNITED STATES OF AMERICA, }
Eastern District of Louisiana, } *ss:*

10 On this 11th day of February, 1895, before me personally appeared Charles Collins Buck, the vice-president of The Plaquemines Tropical Fruit Company, the complainant above named, who, being by me duly sworn, deposes and says that he is the vice-president of the Plaquemines Tropical Fruit Company and familiar with its business, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) CHAS. COLLINS BUCK.

Subscribed and sworn to before me this 11th day of February, 1895.

(Signed) E. R. HUNT,
U. S. Commissioner. [SEAL.]

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Affidavit of Thomas Denesse.

Filed February 11, 1895.

Circuit Court of the United States for the Fifth Circuit and Eastern Dist. of Louisiana.

PLAQUEMINES TROPICAL FRUIT COMPANY
vs.
WILLIAM HENDERSON and HENRY J. LEOVY. } No. 12375.

STATE OF LOUISIANA, *Parish of Orleans,* } *ss:*

On this eleventh (11) day of February, 1895, in the city of
11 New Orleans, State of Louisiana, personally came and appeared Thomas Denesse, who, being first duly sworn, did depose and say—

That he lives at Venice, parish of Plaquemines, Louisiana, near the mouth of the Mississippi river.

That he is well acquainted with the land in that parish, situated in township twenty-one (21) south, ranges thirty and thirty-one (30 & 31) east, lying west of the Mississippi river and Grand pass, owned by the Plaquemines Tropical Fruit Company; that he knows that William Henderson and Henry J. Leovy claim title to portions of said land, and through their agents and employees have and are still cutting willows on said land and removing and selling the same.

Further, deponent saith that the said William Henderson and Henry J. Leovy have within the last four months — deponent has heard Robert S. Leovy, who is generally known as the agent, representative, and employee of the said Henderson and the said H. J Leovy, assert that they intend to close Red and Tiger passes through said land and divide said land into small parcels or lots and sell or rent the same to a large number of persons.

Further this deponent saith not.

(Signed) T. DENESSE.

Sworn to and subscribed before me, at the city of New Orleans, on this 11th day of February, A. D. 1895.

[SEAL.] (Signed) GEO. M. BARNETT,
Notary Public.

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Copy of Rule for Injunction.

Issued February 12th, 1895.

12 Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

PLAQUEMINES TROPICAL FRUIT COMPANY
vs.
WILLIAM HENDERSON & HENRY J. LEOVY. } No. 12375. In Equity.

Order on Bill of Complaint.

Let the defendants show cause on Wednesday, February 13th, 1895, at 11 o'clock a. m., why a preliminary injunction should not issue in the above cause.

New Orleans, Feb. 11, 1895.

(Signed) CHARLES PARLANGE, *U. S. Judge.*

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 12th day of February, 1895.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., February 12, '95, and on the same day, month, and year I served a copy of the within rule for injunction on William Henderson and Henry J.
13 Leovy by handing the same to each of them in person in New Orleans.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY,
D'y U. S. Marshal.

Subpœna in Chancery to William Henderson.

Issued February 11, 1895.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon William Henderson to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1895, then and there to answer a bill in chancery filed against him and another, wherein Plaquemines Trop-

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ical Fruit Company is complainant and said William Henderson and another are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 11 day [SEAL.] of February, in the year of our Lord one thousand eight hundred and ninety-five, and the 119 year of American Independence.

(Signed) E. R. HUNT, *Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit 14 court on or before the first Monday of March, 1895; otherwise the bill may be taken *pro confesso.*

(Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Feb'y 11, '95, and on the same day, month, and year I served a copy of the within subpœna in chancery on William Henderson by handing same to him in person in New Orleans.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY,
D'y U. S. Marshal.

Subpœna in Chancery to Henry J. Leovy.

Issued February 11, 1895.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon Henry J. Leovy to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1895, then and there to answer a bill in chancery filed against him and another, wherein Plaquemines Tropical Fruit Company is complainant and said Henry J. Leovy and another are defendants.

Herein fail not, and have you then and there this writ, 15 with your endorsement thereon how you have executed the same.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 11 [SEAL.] day of February, in the year of our Lord one thousand eight hundred and ninety-five, and the 119 year of American Independence.

(Signed) E. R. HUNT, *Clerk.*

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The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of March, 1895; otherwise the bill may be taken *pro confesso*.

(Signed) E. R. HUNT, *Clerk*.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., February 11, '95, and on the same day, month, and year I served a copy of the within subpœna in chancery on Henry J. Leovy by handing same to him in person in New Orleans.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY,
D'y U. S. Marshal.

Stipulation.

Filed February 14, 1895.

Circuit Court of the United States, Eastern District of Louisiana.

16 PLAQUEMINES TROPICAL FRUIT COMPANY
v.
WILLIAM HENDERSON and HENRY J. LEOVY. } In Equity. No. 12375.

Stipulation.

It is hereby stipulated and agreed between the parties in the above-entitled cause that pending final decree in this court defendants will not close or alter Red pass and Tiger pass or any other pass through or adjacent to said land in township 21 south, ranges 30 and 31 east, southeastern land district, Louisiana, or remove or disturb complainant's property thereon, if any there be; provided that said defendants may cut, remove, and sell willows growing in the portion claimed by defendants, keeping an accurate account thereof and accounting therefor to complainant in case the title shall be finally decreed to be in complainant; and both parties further agree to speed said cause and bring to speedy issue and hearing the questions involved therein.

And meanwhile complainant will not press its motion for injunction *pendente lite* unless there be a violation on the part of the defendants of the terms of this stipulation, and then only after due notice.

Nothing herein is to be considered as a waiver by either party of any of his or its rights or an admission in any way of the claims of the other.

(Signed) GURLEY & MELLEN,
DUANE E. FOX,
Solicitors for Complainant.

(Signed) LEOVY & BLAIR AND
VICTOR LEOVY,
Solicitors for Defendant.

17 *Appearance.*

Extract from the chancery order book.

MONDAY, *March* 4, 1895.

PLAQUEMINES TROPICAL FRUIT CO. *vs.* H. J. LEOVY & WM. HENDERSON. } No. 12375.

Now come the defendants, through Jos. P. Blair and Victor Leovy, and enter their appearance to the bill of complaint.

Notice of Filing of Plea.

Extract from the chancery order book.

MONDAY, *March* 4, 1895.

PLAQUEMINES TROPICAL FRUIT COMPANY *vs.* H. J. LEOVY & WM. HENDERSON. } No. 12375.

The defendants, through Sol'rs Jos. P. Blair and Victor Leovy, have this day filed a plea to the bill herein.

Plea of Defendants.

Filed March 4, 1895.

United States Circuit Court, Fifth Circuit and Eastern District of Louisiana. In Equity.

THE PLAQUEMINES TROPICAL FRUIT COMPANY *vs.* WILLIAM HENDERSON and HENRY J. LEOVY. } Number 12375.

The joint and several plea of William Henderson and Henry J. Leovy, defendants herein, to the bill of complaint of The
18 Plaquemines Tropical Fruit Company, complainant.

These defendants, by protestation and not confessing or acknowledging all or any of the matters and things in the said complainant's bill of complaint mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, for plea to the whole of said bill aver—

That heretofore, to wit, on the twenty-fifth day of January, 1892, the State of Louisiana instituted suit and filed its petition in the civil district court in and for the parish of Orleans and State of Louisiana against Charles C. Buck and The Plaquemines Tropical Fruit Company, which is the complainant in this cause, said suit in said State court being entitled State of Louisiana *vs.* Charles C. Buck *et al.* and numbered 34829 on the docket thereof, and in said petition the said State alleged that it was the owner of certain lands

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in the parish of Plaquemines, in this State, on the west side of the Mississippi river, being township twenty-one south, ranges thirty and thirty-one east, southeastern district, being over thirty-two thousand acres, and that it was the owner of all said land in its entirety except the front lots sold by the United States prior to the year 1849 and except sections 16 in both ranges, and also excepting a tract of land between said lots and what was known as "West bay," as per plan in the State land office, at Baton Rouge, said excepted tract being thirteen hundred and twenty acres, which it had been asserted had been sold by the State of Louisiana in September, 1869, to C. C. Packard, but which, though not claimed by the State in said suit, the State did not admit to have been so sold; and the State further alleged in said petition that it had become the owner of said above-described property by grant and donation from the United States by act of Congress
19 approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to drain the swamp lands within their limits," and also by act of Congress approved March 3rd, 1857, and by conformity with the requirements of law relating thereto; and the said State further alleged that said defendants, the said Buck, described in said petition as residing in Baltimore, Maryland, but then in New Orleans, and the said Plaquemines Tropical Fruit Company, likewise described as said to have been incorporated under and by virtue of the laws of New Jersey, of which said Buck was president, had denied the said State's ownership of said property, and had slandered its claim thereto, and had set up ownership in themselves, falsely claiming title through one Robert M. White, who falsely claimed through patent No. 526, to C. C. Packard from the State of Louisiana, dated in September, 1889, and that in consequence of said illegal acts of said defendants and of each of them it had been damaged to the extent of eighteen hundred dollars, and that the said Buck had been and then was trespassing on said lands, cutting timber thereon and removing the same therefrom and cutting ditches, and otherwise destroying portions of said property and greatly impairing its value, thus causing irreparable injury to the State, and that a writ of injunction was necessary; and, after praying for citation in due form of said defendants, the said State further prayed for an injunction to issue forthwith against both defendants, restraining and prohibiting them and each of them and their officers and agents from slandering the title of the said State to the said land or denying its title thereto, and enjoining and prohibiting them and each of them and their agents from trespassing on said land above described, and from taking or keeping possession of any part thereof, and enjoining and
20 forbidding them and each of them from interfering in any manner with the possession of the said State and its full exercise of ownership over all said land, and that it have judgment, after due proceedings, perpetuating said injunction, and also that it recover of said defendants *in solido* the sum of eighteen hundred dollars, with interest, and for costs.

That a preliminary injunction was forthwith issued by said State

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court enjoining and restraining said defendants and each of them as prayed for in said petition.

That both of the said defendants in said cause were duly served with notice of said suit and duly cited to appear and answer the same; that on or about January 29, 1892, the said defendant, Buck, came into court and filed and exception of no cause of action to the said suit of the said State, and prayed that the said suit be dismissed; that on February 19, 1892, both said defendants appeared and averred that their domicile was in the States of New Jersey and Maryland—"*i. e.*, C. C. Buck of Maryland, and The Plaquemines Tropical Fruit Company of New Jersey"—and that the acts complained of were alleged to have *been* taken place in the parish of Plaquemines, and therefore that the said civil district court of the parish of Orleans was without jurisdiction, and they prayed that the said suit of the State be dismissed.

That on or about February 19, 1892, said exceptions of no cause of action and of want of jurisdiction were heard and tried by said civil district court, and after hearing the pleadings and arguments of counsel on both sides, and for reasons orally assigned, the said court, considering the law to be with plaintiff and against exceptors, ordered that both exceptions be overruled.

That on or about February 23, 1892, the said defendants
21 filed their answer to said petition in said suit, with reservation of the benefit of said exceptions, putting at issue the allegations of said petition and averring ownership and possession of the property described therein, and praying for the dismissal of said suit and the dissolution of said injunction, and that their right to recover damages be reserved, and for general relief.

That on or about April 16, 1892, the said State, with leave of court first had and obtained, filed in said cause a supplemental and amended petition, in which it repeated its allegations in respect to the ownership of said land described in its said original petition and in respect to defendants' slander of title thereto, and alleged that said defendants had falsely alleged that they had acquired title to said land by virtue of an act of sale from Charles Louque, passed before C. T. Soniat, notary public, on November 27, 1891, and that on the same day the said Louque had acquired title thereto from one R. M. White, who had acquired his title from E. E. Norton, assignee in bankruptcy of C. C. Packard, who had acquired the said land by patent No. 526 from the State of Louisiana, in September, 1869; and the said State further alleged that the fact was and was well known to said defendants that the said patent, if it conveyed anything to said C. C. Packard, conveyed by its terms and in fact only thirteen hundred and twenty acres, for which only three hundred and thirty dollars was paid, being twenty-five cents per acre, the then price per acre for such lands owned by the State; and it was further alleged in said supplemental and amended petition that the said false statements and pretences of the said defendants and of each of them created and constituted a cloud on the title of the State and prevented the sale of said lands; that the

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lands thus claimed by defendants and owned by the State
22 were worth over seven thousand dollars, and that defendants had trespassed on said lands and by said trespass the State had been damaged in the sum of two thousand dollars; and in said supplemental and amended petition the said, State, prayed that said defendants be each duly cited, and, after due proceedings had, that there be judgment in favor of the said plaintiff State, and against said defendants for the sum of thirty-eight hundred dollars damages, and that the said State be recognized as the owner of the land described in the original petition, with all the rights pertaining thereto, and quieted in its title and possession thereof, and that it be declared and adjudged that said defendants have no title to the said land, and they and each of them be and remain enjoined to the extent and in the manner prayed for in the original petition.

That both of said defendants in said suit were duly served with notice of and cited to answer said supplemental and amended petition, and on or about May 2, 1892, they both appeared in court for the purpose of excepting thereto, and for cause of exception said that the said supplemental and amended petition altered the substance of the demand of the said original petition and raised new issues; wherefore they prayed for the dismissal thereof; which exception came on to be heard on May 9, 1892, and was argued by counsel on both sides and overruled by the said court.

That thereafter, to wit, on May 19, 1892, said defendants appeared in said court and averred that said State court was without jurisdiction over said cause because the land concerned was situated in the parish of Plaquemines, in this State, and neither of defendants resided within the jurisdiction of said court, and each of them had a domicile in said parish of Plaquemines; and, subject to said
23 plea, said defendants answered said supplemental and amended petition and put at issue the allegations thereof; and, for further answer thereto, averred that all the unsurveyed sea marsh in township twenty-one south, ranges thirty and thirty-one east, lying west of the Mississippi river and Grand pass, parish of Plaquemines, except certain lots, of small depth, fronting on said Mississippi river, and section 16, in range thirty (school section), was sold and parted with by the plaintiff State, for a valuable consideration, in 1869 to C. C. Packard, and the right to all accretions to said property passed with said sale, and that said property was subsequently sold and transferred by the assignee of said Packard to R. M. White, and afterwards by said White to Chas. Louque, who, on November 27, 1891, by act before Chas. T. Soniat, notary public, sold and transferred the same to said defendant, The Plaquemines Tropical Fruit Company; and said defendants further averred in their said answer that they had been informed from an examination of the public records of this State and by the register of its land office that the State had no claim to said land, and on the faith of said information and representations had so purchased said land and made improvements thereon, and that the claim set up by the State was an act of bad faith and a great wrong; and they fur-

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ther averred that said The Plaquemines Tropical Fruit Company, defendant, had acquired said land from the said Charles Louque with full warranty of title and it was entitled to have said Louque made a party to said suit and called to defend said title; and the said defendants prayed in their said plea and answer that their said plea to the jurisdiction be sustained, and, should it be overruled, that the said Charles Louque be cited and called in warranty, and for a trial by jury, and that, after due proceedings, there be judgment in favor of defendants and against the plaintiff State,
24 dismissing its suit and decreeing the defendant The Plaquemines Tropical Fruit Company to be the sole and lawful owner of said lands, and that, should there be judgment against defendants, they have like judgment against the said warrantor, Louque.

That thereupon the said Charles Louque was duly cited and called in warranty, and on June 8, 1892, appeared in said court and filed his answer, wherein, after pleading a general denial except as to special admissions, he admitted the purchase of said land from one R. M. White by act before the said Soniat, notary public, and averred that he had no personal interest therein, but purchased the same at the request and for the use and benefit of the said Charles C. Buck and the said The Plaquemines Tropical Fruit Company, to whom he immediately transferred the same before the same notary; and further averred that the said R. M. White was bound in warranty to him, and the said Louque prayed that the call in warranty against him be dismissed; that, should it be sustained, the said White be called and cited in warranty; and he further prayed for trial by jury and for general relief.

That thereupon R. M. White was cited and called in warranty in said cause, and on June 17, 1892, appeared in said court and filed an answer, wherein he pleaded the general issue and asked to be thence dismissed with costs, and for general relief.

That thereafter, on November 27, 1892, the said defendants pleaded to the said State's demand the prescription of five and ten years, and further pleaded estoppel, based on the alleged recognition of the validity of the title under which they claimed said land by the register of the land office of the State.

That said cause was duly called and tried and evidence offered on behalf of the plaintiff State and on behalf of the said
25 defendants, and, after being argued by counsel, the said cause was on November 29, 1892, duly submitted to the jury, who found a verdict to the effect that The State of Louisiana, plaintiff, was the sole owner of the land claimed in its aforesaid petition and was entitled to the possession thereof, and the said defendants, Buck and The Plaquemines Tropical Fruit Company, had no title thereto; and they further found that the rights of said defendants and of the said Charles Louque against the said defendant, R. M. White, should be reserved, and the said verdict was thereupon ordered recorded and the jury discharged.

That on December 2, 1892, the said defendants filed in said court

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an application for a new trial; which application came on to be heard on December 12, 1892, and was refused by the said court.

That thereafter, on December 12, 1892, the said civil district court rendered judgment in said cause, and, considering the said verdict of the jury and the law applicable thereto, it was ordered, adjudged, and decreed that the State of Louisiana was the sole owner of the land claimed in the petition and was entitled to the possession thereof, and that the defendants, Charles C. Buck and The Plaquemines Tropical Fruit Company, had no title thereto, said land being described in said judgment as follows, to wit: Certain lands in the parish of Plaquemines, being township twenty-one (21) south, ranges thirty and thirty-one (30 and 31) east, southeastern land district of Louisiana, being over thirty-two thousand acres of what is known as and called swamp and overflowed land, except the front lots, sold by the United States prior to the year 1849, and except sections 16 in both ranges, and also a tract of land, containing thirteen hundred and twenty (1,320) acres, between said lots and what was
26 known as West bay, as per plan in the State land office at Baton Rouge, a duly certified copy of which was filed in this suit November 23, 1892, marked "A. C.," and certified as follows: "Surveyed in 1836 by G. T. Connelly; State land office, Baton Rouge, La., Nov. 28, 1891. (Signed) John S. Lanier, register;" which said plan was made a part of said judgment for purposes of description and identification; and it was further ordered, adjudged, and decreed that the rights of the above-named defendants and of the said Charles Louque against the defendant R. M. White be reserved; and it was further ordered, adjudged, and decreed that the injunction theretofore issued in said cause, so far as it restrained said defendants or any of them from interfering with the plaintiff State's full rights of ownership and possession of said land hereinabove described, be made peremptory and absolute; and it was further ordered that said defendants pay the costs, and said judgment was duly signed on December 16, 1892.

That thereafter, on December 23, 1892, after their motion for a new trial had been refused, the said defendants in said suit took an appeal from said judgment of the civil district court to the supreme court of the State of Louisiana, and after hearing argument and taking the same under advisement the said supreme court on November 20, 1893, rendered a decision and judgment affirming in all respects the aforesaid rulings and judgment of the said civil district court; that said defendants on November 27, 1893, filed an application in the said State supreme court for a rehearing of said cause, which application for a rehearing was refused on April 23, 1894, on which day the said judgment and decree of the said supreme court became final and conclusive.

That subsequently a writ of error in the aforesaid cause
27 was obtained by said defendants from the Supreme Court of the United States, directed to the said supreme court of the State of Louisiana, which writ of error was, on or about October 22, 1894, dismissed by the Supreme Court of the United States, which judgment of dismissal is final and conclusive, and the man-

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date of the Supreme Court of the United States in accordance therewith has been sent down and filed in the State supreme court.

Now, these defendants further aver that the said civil district court in and for the parish of Orleans and State of Louisiana and the said supreme court of the State of Louisiana were courts of competent jurisdiction, and had jurisdiction to try and decide the said suit and the appeal allowed therein, entitled and numbered as aforesaid, and that the said judgments and decrees are final and upon the merits.

And they further aver that the complainant herein, The Plaquemines Tropical Fruit Company, was one of the defendants in said cause in said State court, and that the other defendant in said cause, Charles C. Buck, was the president of said complainant; that the land which by said judgment of said State court was adjudged and decreed to belong to the State of Louisiana is the identical land of which the complainant now claims in its bill of complaint to be the owner, except that its present bill includes, in the general description of land claimed to be owned by complainant, the thirteen hundred and twenty acres which the State expressly excepted from its said suit in said State court; that the land stated in complainant's bill of complaint herein to have been acquired by these defendants from the State of Louisiana, and of which the complainant now claims to be the owner and in respect to which the relief herein prayed for is asked, based on said claim of ownership,

28 is a part and portion of the land to which the complainant set up title in the said suit in the State court, and which in said suit was adjudged and decreed to belong to the State, whose rights of ownership and possession were protected by injunction, as aforesaid, and now in force; that these defendants acquired said land from the State subsequent to the judgment rendered, as aforesaid, in the said State court and affirmed on appeal, and are privies in the estate to the State, in whose favor said judgment was rendered; that the title under — said complainant now claims said land is the same title which it set up and relied upon in the said suit in the said State court.

All which said several above-mentioned matters and things these defendants do aver, and plead the said judgment of the said civil district court in and for the parish of Orleans and State of Louisiana and the said affirmance thereof by the supreme court of the State of Louisiana in bar to the said complainant's said bill, and pray the judgment of this honorable court whether they should make any further answer thereto.

Wherefore defendants pray to be hence dismissed with all their costs and charges in this behalf most wrongfully sustained.

(Signed) J. P. BLAIR,
VICTOR LEOVY,
Solicitors for Defendants.

Henry J. Leovy and William Henderson, being severally sworn, do severally depose and says that they are defendants in the above-

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entitled cause, and that the foregoing plea is not interposed
29 for delay, and that the same is true in point of fact.

(Signed) HENRY J. LEOVY.
WM. HENDERSON.

Sworn to & subscribed before me this 2nd day of March, 1895.
[SEAL.] (Signed) ROB'T P. UPTON, *Not. Pub.*

I hereby certify that, in my opinion, the foregoing plea is well founded in point of law.

(Signed) J. P. BLAIR,
Of Counsel for Defendant.

Motion and Order Fixing Plea for Hearing.

Entered and filed April 9th, 1895.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT COMPANY
vs.
WM. HENDERSON *et al.* } No. 12375.

On motion of Duane E. Fox and Gurley & Mellen, of counsel for plaintiff herein—

It is ordered by the court that the plea herein filed by the defendants be set for trial on Saturday, the fourth day of May, 1895, at 11 o'clock a. m., and that J. P. Blair & Victor Leovy, counsel of record for said defendants, be notified thereof.

30 *Amendment to Bill.*

Entered and filed June 24, 1895.

Circuit Court of the United States for the 5th Circuit & Eastern Dist. of Louisiana.

PLAQUEMINES TROPICAL FRUIT COMPANY
vs.
WM. HENDERSON *et al.* } No. 12375.

On motion of Duane E. Fox and Gurley & Mellen, solicitors for complainant—

It is ordered that complainant be allowed to amend the bill herein filed by inserting therein, after the words "New Jersey," on the 11th line of the 5th paragraph, the following words, viz: "And the record of said suit, consisting of the pleadings and evidence in said State court, so showed," and by striking out the word "citizen," in said line, and substituting therefor the word "corporation."

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It is further ordered that the plea filed herein to the original bill be considered as made to the bill as amended.

(Signed) CHARLES PARLANGE, *U. S. Judge.*

June 24, 1895.

Hearing and Submission as to Sufficiency of Plea.

Extract from the minutes, April term, 1895.

NEW ORLEANS, MONDAY, *June* 24, 1895.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

31 PLAQUEMINES TROPICAL FRUIT COMPANY *vs.* WM. HENDERSON & HENRY J. LEOVY. } No. 12375.

This cause came on to be heard upon the sufficiency of the plea filed herein by defendants, J. P. Blair appearing for defendants in support of plea, Duane E. Fox and Gurley & Mellen for the complainant, and was argued by the solicitors for the respective parties and submitted, when the court took time to consider.

Decree as to Sufficiency of Plea.

Entered and filed June 27, 1895.

Circuit Court of the United States, Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT CO. *vs.* WM. HENDERSON & H. J. LEOVY. } 12375. In Equity.

This case came on to be heard at a former day upon the plea herein filed by the defendants to the bill of complaint and, after argument of counsel, was submitted.

On consideration whereof, it is ordered that the said plea of defendants be adjudged sufficient.

(Signed) CHARLES PARLANGE, *Judge.*

June 27, 1895.

32 *Decree Dismissing Bill.*

Entered and filed July 1, 1895.

United States Circuit Court, Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT COMPANY *versus* H. J. LEOVY & WM. HENDERSON. } No. 12375. In Equity.

This cause came on to be further heard at this term, and counsel for complainant having stated in open court that complainant does

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not dispute, but admits, the correctness in point of fact of defendants' plea in bar, and does not desire to traverse the same, and counsel for both parties desiring and requesting a final decree at this term, and thereupon and in consideration thereof, and of the decree heretofore rendered in this cause in favor of the sufficiency of said plea, it is ordered, adjudged, and decreed that defendants' said plea in bar, filed herein on March 4, 1895, is sufficient and is true in point of fact, and accordingly it is ordered, adjudged, and decreed that the said bill of complaint herein be, and the same is hereby, dismissed with costs to the defendants, to be taxed.

(Signed) CHARLES PARLANGE, *Judge.*

New Orleans, July 1, 1895.

Petition for Appeal to Supreme Court of the United States.

Filed June 26, 1896.

33 Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT CO., Complainant, Appellant, v. WILLIAM HENDERSON and HENRY J. LEOVY, Defendants, Respondents.	In Equity.

The above-named complainant, Plaquemines Tropical Fruit Company, conceiving itself aggrieved by the order entered on July 1, 1895, in the above-entitled proceeding, doth hereby appeal from said order to the Supreme Court of the United States, and it prays that this its appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) GURLEY & MELLEN,
DUANE E. FOX,
Solicitors for Complainant and Appellant, Plaquemines Tropical Fruit Company.

New Orleans, Louisiana, June —, 1896.

Order.

And now, to wit, on June 26th, 1896, it is ordered that the appeal be allowed as prayed for on complainant giving bond, with sufficient security, in the sum of two hundred and fifty dollars, said ap-
34 peal to be returnable to the U. S. Supreme Court within thirty days from this date.

New Orleans, La., June 26, 1896.

(Signed) CHARLES PARLANGE, *U. S. Judge.*

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Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT CO., Plaintiff, Appellant,
v.
WILLIAM HENDERSON and HENRY J. LEOVY, Defendants, Respondents.
} In Equity.

Assignment of Error.

And now, on the 26th day of June, 1896, comes the said complainant, by Gurley & Mellen and Duane E. Fox, its solicitors, and says that the decree in said cause is erroneous and against the just rights of said complainant, for the following reasons:

First. Because the bill of complaint and plea upon which decree herein was given showed that the suit of The State of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company, the judgment in which is held by said decree to be a bar to this suit, was a suit by a State against citizens of other States, and was shown to be so by the record therein, to which class of suits section 2 of article III of the Constitution of the United States declares "the judicial power of the United States shall extend," and which must therefore be tried either in a Federal court exercising the "judicial power" of the United States or in some court from which the
35 defendants may remove or appeal the cause on the merits to a Federal court, while said cause of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was heard and determined in the local courts of the State of Louisiana, from which the defendants could neither remove nor appeal on the merits to any court exercising the "judicial power" of the United States, and therefore the judgment therein was without jurisdiction and void and no bar to this suit.

Second. Because the bill of complaint and plea showed that said suit of the State of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was not a suit brought in the exercise or assertion of the sovereignty of said State to execute penal laws, enforce penalties, collect taxes, or otherwise, but was an ordinary suit to determine the ownership of certain land, in which the State appeared exactly as an ordinary litigant, and therefore the provision in section 2 of article III of the Constitution of the United States, that the judicial power of the United States "shall extend to" said cause, can be enforced without diminution or restriction of the sovereign powers and duties of said State, and it should be so enforced, and therefore the judgment in said suit is no bar to this suit.

Third. Because a Federal court, to wit, the Supreme Court of the United States, was at the time of said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company fully invested by paragraph 2 of section 2 of article III of the Constitution of the United States with jurisdiction to hear and finally determine said

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cause, while the courts of the State of Louisiana have never been granted such jurisdiction by the Constitution of the United States, and therefore the judgment in said suit was without jurisdiction and void and no bar to this suit.

36 Fourth. Because the local courts of Louisiana could not exercise jurisdiction in a case to which the Constitution of the United States declares the judicial power of the United States shall extend, except after such legislation by Congress as will enable the case to be removed or appealed on the merits to some Federal court, which legislation has been enacted by Congress covering the other cases to which the judicial power of the United States extends, but accidentally or intentionally omitting suits by a State against citizens of other States, and therefore the courts of Louisiana in said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company were without jurisdiction and the judgment therein was void and no bar to this suit.

Fifth. Because the failure of Congress, accidental or otherwise, to pass a law providing for the appeal or removal to a Federal court of a certain class of the cases to which the Constitution of the United States declares the judicial power of the United States shall extend cannot have the effect of making the jurisdiction of the courts of a State, at the option of such State, final and exclusive of the jurisdiction of the courts of the United States, and therefore the judgment of the courts of Louisiana in said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was without jurisdiction and void and no bar to this suit.

Sixth. Because, until appropriate action by Congress providing for the supervision by the Federal courts, by removal or appeal, over cases between a State and citizens of other States, to which the Constitution of the United States declares the judicial power of the United States shall extend, the jurisdiction in such cases re-

37 mains exclusively where it was vested by the Constitution, to wit, in the Supreme Court of the United States; that such jurisdiction was vested in said court exclusively at the time of the said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company, and therefor- the judgment in said suit was without jurisdiction and void and no bar to this suit.

Seventh. Because Congress cannot nullify the Constitution of the United States by failing to provide a Federal court for the trial of cases to which the Constitution declares the judicial power of the United States shall extend, nor can Congress bestow concurrent jurisdiction upon the courts of the States in such cases without providing the correlative power of removal or appeal on the merits to some Federal court, so that the jurisdiction of the State courts may not be final and exclusive of the courts and judicial power of the United States, and therefore, no such appeal or removal having been provided for by Congress in suits by a State against citizens of other States, the judgment of the courts of Louisiana in said case of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was without jurisdiction and void and no bar to this suit.

Wherefore the said complainant prays that the said decree be re-

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versed, and that the said court may be directed to enter a decree in accordance with the prayer of the bill.

(Signed) GURLEY & MELLEN,
DUANE E. FOX,
Solicitors for Complainant.

38 *Bond for Appeal.*

Filed June 27, 1896.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The Plaquemines Tropical Fruit Company and Piercy J. Stakelum, are held and firmly bound, jointly and severally, unto William Henderson and Henry J. Leovy in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said William Henderson and Henry J. Leovy, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated the 27th day of June, in the year of our Lord eighteen hundred and ninety-six.

Whereas the said Plaquemines Tropical Fruit Company having heretofore, to wit, on the 26th day of June, 1896, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 1st day of July, 1895, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Plaquemines Tropical Fruit Company *vs.* William Henderson and Henry J. Leovy, No. 12375 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Plaquemines Tropical Fruit Company shall prosecute its said appeal to effect and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be
39 void; otherwise to remain in full force and virtue.

(Signed) PLAQUEMINES TROPICAL FRUIT CO.
CHAS. COLLINS BUCK,
V.-President. [L. S.]
(Signed) PIERCY J. STAKELUM. [L. S.]

Approved:
N. O., June 27th, 1896.
(Signed) CHARLES PARLANGE, *U. S. Judge.*

(*Affidavit on Reverse.*)

UNITED STATES OF AMERICA, *District of Louisiana,* } *ss:*

Personally appeared Piercy J. Stakelum, who, being duly sworn, deposes and says that he is the surety on the within bond; that he

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resides in New Orleans, La., and is worth the full sum of two hundred and fifty dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) PIERCY J. STAKELUM.

Subscribed and sworn before me this 27th day of June, 1896.

(Signed) E. R. HUNT,
Commissioner U. S. Circuit Court, District of Louisiana.

40 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to William Henderson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Plaquemines Tropical Fruit Company is complainant and appellant and William Henderson and Henry J. Leovy are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said Plaquemines Tropical Fruit Company, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 25 day of June, in the year of our Lord one thousand eight hundred and ninety-six.

CHARLES PARLANGE, *Judge.*

41 [Endorsed:] E. Return. United States circuit court, eastern district of Louisiana. No. 12375. Plaquemines Tropical Fruit Co. *vs.* William Henderson & Henry J. Leovy. Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed July 8, 1896. E. R. Hunt, clerk.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., June 26, '96.

On this 8th day of July, 1896, before the undersigned authority personally came and appeared John Early, who, being duly sworn, deposes and says that he is a deputy U. S. marshal for the eastern district of La.; that on the 26th day of June, 1896, he served the within writ on William Henderson by handing the same to him in person in the city of New Orleans, Louisiana.

JOHN EARLY.

Sworn to and subscribed before me on this 8th day of July, 1896.

H. J. CARTER,
U. S. Commissioner.

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42 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Henry J. Leovy, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Plaquemines Tropical Fruit Company is complainant and appellant and William Henderson and Henry J. Leovy are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said Plaquemines Tropical Fruit Company, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 26 day of June, in the year of our Lord one thousand eight hundred and ninety-six.

CHARLES PARLANGE, *Judge.*

43 [Endorsed:] E. Return. United States circuit court, eastern district of Louisiana. No. 12375. Plaquemines Tropical Fruit Co. *vs.* William Henderson & Henry J. Leovy. Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed July 8, 1896. E. R. Hunt, clerk.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., June 26, '96.

On this 8th day of July, 1896, before the undersigned authority, personally came and appeared John Early, deputy United States marshal for the eastern district of Louisiana, who, being duly sworn, deposes & says that on the 27th day of June, 1896, he served the within writ on Mr. Henry J. Leovy, by handing the same to him in person, in the city of New Orleans, La.

JOHN EARLY.

Sworn to & subscribed before me on this 8th day of July, 1896.

H. J. CARTER,
U. S. Commissioner.

44 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 39 pages contain and form a full, complete,

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true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of, and the citations of appeal and proof of service in the case of, Plaquemines Tropical Fruit Co. *vs.* William Henderson & Henry J. Leovy, No. 12375 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 10 day of July, A. D. 1896.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 10 day of July, A. D. 1896.

CHARLES PARLANGE, *Judge.*

Endorsed on cover: Case No. 16,343. E. Louisiana C. C. U. S. Term No., 204. The Plaquemines Tropical Fruit Company, appellant, *vs.* William Henderson and Henry J. Leovy. Filed July 23rd, 1896.

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